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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,016	09/20/2001	Alain Gantier	P21432	3081
7055	7590	09/14/2006	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			MOHANDESI, JILA M	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/937,016

Applicant(s)

GANTIER, ALAIN

Examiner

Jila M. Mohandesi

Art Unit

3728

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 24.
Claim(s) objected to: _____.
Claim(s) rejected: 14-23, 25-44 and 47-64.
Claim(s) withdrawn from consideration: _____.

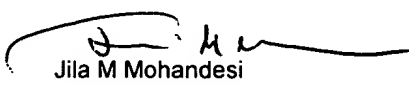
AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

☒ Attachment A.


Jila M Mohandesi
Primary Examiner
Art Unit: 3728

Continuation of 11. does NOT place the application in condition for allowance because: In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Phillips clearly discloses the rigid/semi rigid cover articulates movement with respect to the sole of the shoe, but does not appear to disclose the articulating/connecting point to be located to the sole between a top and bottom of said sole. Boughey discloses the cover being connected/articulated to the sole between a top and bottom of the sole. Inasmuch Britannica Online Academic Edition (see attachment A) defines articulate to mean to unite or connect by or as if by a joint, the cover of Boughey is connected to the sole regardless of if it articulates movement with respect to the sole of the shoe or not. Boughey is only relied on for the teaching of the location of the connection, which is clearly shown in the figures to be to the sole between a top and bottom of said sole.

Ellis '874 discloses that the cover can be made of different materials, which inherently will have different rigidity. (see column 3, lines 2-6). Delgatty (US 6,874,256) is merely cited to show it is old and conventional to provide additional interchangeable covers for footwear so that the consumer can customize their footwear. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a plurality of covers made from different materials having varying rigidities as taught by Delgatty to customize the footwear and since it has been held that mere duplication and rearranging of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. V. Bemis Co.*, 193 USPQ 8 and *In re Einstein*, 8 USPQ 167.


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Dictionary

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Quotations

> To find a Thesaurus entry for **articulate**, click here.

SEARCH RESULTS: "articulate"

Thesaurus

Main Entry: **ar·tic·u·late**

Pronunciation: -"lAt

Function: *verb*

Inflected Form(s): -lat·ed; -lat·ing

transitive senses

1 a : to utter distinctly <*articulating* each note in the musical phr to give clear and effective utterance to : put into words <*articula* grievances> **c** : to give definition to (as a shape or object) <shade: gray were chosen to *articulate* different spaces -- Carol Vogel>

2 a : to unite by means of a joint : **JOINT** **b** : to form or fit into a systematic whole <*articulating* a program for all school grades>

intransitive senses

1 : to utter articulate sounds

2 : to become united or connected by or as if by a joint

- ar·tic·u·la·tive /-l&-tiv, -"lA-/ *adjective*

- ar·tic·u·la·tor /-"lA-t&r/ *noun*

Dictionary Pronunciation Key

- \&\ as a and u in abut
- \[^&]\ as e in kitten
- \&r\ as ur and er in further
- \a\ as a in ash
- \A\ as a in ace
- \ä\ as o in mop
- \au\ as ou in out
- \ch\ as ch in chin

- \e\ as e in bet
- \E\ as ea in easy
- \g\ as g in go
- \i\ as i in hit
- \I\ as i in ice
- \ih\ as i in inh